

RECEIVED

DEC 27 1991

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)

TRINITY BROADCASTING OF)
FLORIDA, INC.)

File No. BRCT-911001LY

For Renewal of License of)
Commercial Television Station)
WHFT, Miami, Florida)

To: The Commission

REC'D MASS MED BUR

DEC 30 1991

PETITION TO DENY VIDEO SERVICES

GLENDAL E BROADCASTING COMPANY

Cohen and Berfield, P.C.
1129 20th Street, NW, #507
Washington, D.C. 20036
(202) 466-8565

Its Attorneys

Date: December 27, 1991

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. Preliminary Matters	1
II. Issues Requested	2
III. Facts and Background	4
A. Introduction	4
B. The Wilmington Application	6
C. TBN's Control over NMTV	7
1. Background	7
2. Control over Board of Directors	8
3. Control over Programming	12
4. Control of Finances	14
5. Control over Personnel	17
6. Other Indicia of Control - WTGI Acquisition	19
7. Other Indicia of Control	20
D. Lack of Candor/Misrepresentation	23
E. Aguilar's Felony Conviction	25
IV. Law and Analysis	26
A. Issues 1-4	26
B. Issue 5 Lack of Candor/Misrepresentation	36
C. Issues 6-7	38
V. Conclusion	39

SUMMARY

Issues must be designated against the renewal application of Trinity Broadcasting of Florida, Inc. (TBF) to determine whether its principals have used National Minority TV, Inc. (NMTV) as a sham front to evade the Commission's multiple ownership rule. TBF's directors own attributable interests in twelve commercial television stations. Paul Crouch's position as President and a director of NMTV is legal only if NMTV is a bona fide minority-controlled entity. In fact, NMTV's minority directors are figureheads who exercise no independent control over its affairs. Trinity Broadcasting Network controls NMTV's programming, finances and personnel decisions, and it also exercises control over NMTV's minority directors. Its actions are a flagrant abuse of the Commission's processes and require the specification of a multitude of issues. Furthermore, NMTV and Paul Crouch lacked candor and misrepresented facts concerning the TBN/NMTV relationship. They also were not candid with the Commission concerning Phillip Aguilar's felony conviction, and issues must be added to investigate the failure to report that conviction and subsequent lack of candor.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC 27 1991

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)

TRINITY BROADCASTING OF)
FLORIDA, INC.)

File No. BRCT-911001LY

For Renewal of License of)
Commercial Television Station)
WHFT, Miami, Florida)

To: The Commission

PETITION TO DENY

Glendale Broadcasting Company (Glendale), by its attorneys, now petitions to deny or to designate for hearing the above-captioned renewal application filed by Trinity Broadcasting of Florida, Inc. (TBF) on October 1, 1991.

I. PRELIMINARY MATTERS

Glendale has standing to file this petition to deny

Brothers Radio Stations v. United States, 309 U.S. 470 (1940).

The factual allegations contained in this petition are supported either by affidavits of persons with personal knowledge of the facts or by materials of which the Commission may take official notice. The petition therefore complies with the procedural requirements imposed by Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §309(d)(1).

Glendale recognizes that the Commission ordinarily prefers that issue requests against a competitor be filed after designation for hearing. In this case, however, the Commission has already held that it will consider matters discussed herein in connection with applications filed by TBF or related companies. Glendale therefore believes that these matters may be considered and ruled

following issues be designated against TBF's renewal application:

1. To determine whether Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network (TBN) and/or Paul F. Crouch exercises de facto control over National Minority TV, Inc.
2. To determine whether TBN and/or Paul F. Crouch abused the Commission's processes by using National Minority TV, Inc. as a subterfuge to evade Section 73.3555(d) of the Commission's rules.
3. To determine whether a grant of the WHFT renewal application would be consistent with Section 73.3555(d) of the Commission's rules.
4. To determine whether National Minority TV, Inc. falsely claimed minority preferences in LPTV applications filed in its name and whether such false certifications were an abuse of the Commission's processes.
5. To determine whether National Minority TV, Inc., Paul F. Crouch and/or TBN lacked candor and/or misrepresented facts in an "Opposition to Petition to Deny" filed in the name of National Minority TV, Inc. on May 23, 1991 and/or its September 24, 1991 response to a Commission inquiry.

III. FACTS AND BACKGROUND

A. Introduction

Attachment 1 to this petition is an ownership report filed on behalf of Trinity Broadcasting of Florida, Inc. (TBF) on June 13, 1991. Exhibit 1 to that report discloses that Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network (TBN) is the licensee of four commercial television stations. The directors of TBN, which is a non-stock corporation, are Paul F. Crouch, Janice Crouch, and Norman G. Juggert. The same exhibit also establishes that the same three individuals are the directors of various corporations that are the licensees of commercial television stations at Phoenix, Arizona, Oklahoma City, Oklahoma, Tacoma, Washington, Miami, Florida (TBF), Richmond, Indiana, Bloomington, Indiana, Poughkeepsie, New York, and Dallas, Texas. Thus, these three individuals control twelve commercial television stations.^{1/}

The ownership report also discloses that Paul F. Crouch (but not Janice Crouch or Norman Juggert) is a director of National Minority TV, Inc. (NMTV), the licensee of commercial television station KNMT at

^{1/} In a non-stock corporation, the Commission normally looks to directors in evaluating ownership and control. Roanoke Christian Broadcasting, Inc., 52 RR 2d 1725 (Rev. Bd. 1983).

Portland, Oregon. NMTV's ownership report (Attachment 2 to this petition) demonstrates that it is also a non-stock corporation with three directors: Paul F. Crouch, P. Jane Duff, and Phillip Aguilar. Mr. Crouch is not a minority.

Under Section 73.3555(d) of the Commission's rules, no individual may have an attributable interest in thirteen commercial television stations that are not minority-controlled. An individual may hold attributable interests in fourteen commercial television stations if at least two of those stations are controlled by minorities. In an assignment application filed by NMTV, NMTV submitted that it was a minority-controlled entity because Ms. Duff and Phillip David Espinoza were minorities. Subsequently, as demonstrated in Attachment 2, Mr. Espinoza was replaced by Mr. Aguilar, who claims to be Hispanic. See Attachment 3 to this petition.^{2/} Thus, under NMTV's rationale, Crouch's directorship in NMTV is permissible because Duff and Aguilar, who are minorities, control its affairs.

^{2/} Attachment 3 is an excerpt from an application filed by NMTV to acquire a construction permit for a commercial television station at Odessa, Texas. NMTV subsequently built that station and sold it in 1991. See Attachment 4 to this petition.

B. The Wilmington Application

On March 29, 1991, an application was filed for the Commission's consent to assign the license of commercial television station WTGI at Wilmington, Delaware to NMTV. A timely petition to deny that application was filed on May 10, 1991 by Dan Borowicz which alleged, inter alia, that NMTV was a sham minority front corporation set up by TBN to evade the multiple ownership rule.^{3/} An opposition was filed in NMTV's name on May 23, 1991.^{4/} Mr. Borowicz then filed a reply.^{5/}

After reviewing the pleadings, the Commission determined that the assignment application could not be granted based upon the pleadings before it. Instead, it directed a detailed letter to NMTV asking it to answer specific questions concerning the relationship between NMTV, TBN, Paul Crouch, Duff, and Aguilar, as well as the circumstances surrounding Espinoza's replacement by Aguilar. This letter is submitted as Attachment 8 to this petition. NMTV responded to this letter on September 24, 1991. Subsequently, NMTV asked that the

^{3/} Copies of the pertinent portions of the text of the petition to deny are submitted as Attachment 5 to this petition.

^{4/} Pertinent portions of the opposition text are submitted as Attachment 6 to this petition.

^{5/} Pertinent portions of the reply text are submitted as Attachment 7 to this petition.

assignment application be dismissed. In a letter dated October 11, 1991, the Commission granted the request but noted:

Nevertheless, in view of the issues raised in the petition to deny and Booth American Co., 58 FCC 2d 553 (1976), the Commission must consider and resolve the issues regardless of the dismissal of the application. Consequently, dismissal of this application will be

determining de facto control are ability to control (1) the corporation's board of directors, (2) programming, (3) finances and (4) personnel. Arnold L. Chase, 5 FCC Rcd 1642, 1643, 67 RR 2d 815, 818 (1990). The Commission will examine the totality of the record in making that determination. Id.

2. Control over Board of Directors

An important indicia of TBN's control over NMTV is that all of NMTV's officers and directors are heavily dependent upon TBN for their income or livelihood. Except for Phillip Aguilar, all of TBN's officers and directors (including Duff) are employed by TBN and are paid by TBN. Affidavit of Dr. Paul F. Crouch, dated September 20, 1991, Pp. 14-15 (Attachment 10 to this petition). While Rev. Aguilar is not an employee of TBN, his self-described ministry, Set Free Christian Fellowship, Inc. (Set Free) receives \$5,000 a month and the free use of houses and properties in California, Texas, and Illinois. Affidavit of Rev. Phillip R. Aguilar, September 1991, Pp. 4-5, 11 (Attachment 11 to this petition). In a filing with Orange County, California, Set Free averred that its "rehabilitation" activities were supervised by Set Free and TBN "as a joint ministry". See Attachment 12, P. 4. Mr. Aguilar has also appeared "any number of times" on TBN's programming. Crouch Affidavit (Attachment 10), P. 2.

Set Free also receives goods donated by TBN viewers. Attachment 10, Pp. 4-5. Aguilar's project is thus hugely dependent on TBN.

The dependence of both Duff and Aguilar upon TBN must be contrasted with the fact that neither director receives any compensation from NMTV. Aguilar Affidavit (Attachment 11), Pp. 10-11. Thus, while both directors (or their projects) receive substantial compensation from TBN, they receive no compensation from the corporation that they purportedly control. TBN is in a position to exercise control over both Aguilar and Duff because they are both heavily reliant upon TBN financially and otherwise.

Perhaps the most revealing indicia of the minority directors' relationship to NMTV is a newspaper article in the Orange County Register in which Aguilar describes himself as a "figurehead" in NMTV's affairs. A copy of the article is submitted as Attachment 13 to this petition. When the Commission asked Aguilar to specifically respond to the article, he claimed that he "was taken totally out of context". Attachment 11, P. 1. He admitted using the word "figurehead" but claimed that he "referred to my status as representing Set Free." Id.

Aguilar's explanation cannot be accepted at face value. The newspaper article reads in pertinent part as follows:

A TBN spokesman said Aguilar, as a director of National Minority, sets corporate goals and objectives and makes decisions in such areas as property acquisition.

But Aguilar, in an interview, acknowledged that he is little more than a "figurehead" in the corporation. He said he receives no compensation (emphasis added).

The article's language is patently inconsistent with Aguilar's explanation. Furthermore, Webster's New Collegiate Dictionary defines "figurehead" as "a head or chief in name only." The use of the word "figurehead" with respect to Aguilar's participation in either Set Free or TBN is nonsensical. He is not an officer or director of TBN, and he has consistently represented himself as the de facto head of Set Free. The only rational interpretation of Aguilar's use of the word "figurehead" would be with respect to his involvement in NMTV. Moreover, as will be shown below, Aguilar truly is a "figurehead" of NMTV.

Duff describes her title as "Assistant to the President of Trinity Broadcasting Network" (the President being Paul Crouch). Affidavit of P. Jane Duff, dated

over, with respect to Duff, it is impossible to separate her TBN work (where Paul Crouch is her boss) from her NMTV work. TBN and NMTV have admitted that they have the same offices, address and telephone number. Consolidated Opposition to Petition to Deny (Attachment 6), Pp. 31-32. Moreover, the enclosed biography of Duff (which is from an FCC application filed by Community Educational Television, Inc., (another TBN affiliate), makes no mention of any broadcast or managerial experience on her part prior to her employment by TBN. See Attachment 16. The same application's biographical description of Paul Crouch demonstrates that his "professional life has concentrated on television programming and broadcasting" since 1954. See Attachment 17. One of the questions the Commission asked in its inquiry letter was whether Aguilar had any broadcast experience when he was appointed a director. Attachment 8, P. 2. Aguilar's response showed that his broadcast experience, apart from work relating to TBN, was a producer for a closed-circuit prison radio station and an unspecified number of

In preparing this pleading NMTV has discovered that Rev. Aquilar [sic] had been convicted of a criminal charge of assault. Accordingly, NMTV's response to Section II, question 4(a) is incorrect. NMTV will be filing a corrective amendment as soon as practically possible.

of its programming. Attachment 18 to this petition is the May 1991 issue of Praise The Lord, a newsletter issued by TBN. The TBN newsletter refers to the proposed WTGI purchase and notes that Paul Crouch is NMTV's President. No mention is made of Aguilar or Duff. The newsletter also contains a twenty-four hour programming schedule for TBN, and the newsletter lists the Portland NMTV station together with the stations owned by TBN. The newsletter states that NMTV is "working in full affiliation with your TBN" (emphasis in original). The clear import of the newsletter is that the NMTV station in Portland contains the same programming as the TBN stations. TBN provides a twenty-four hour program service off satellite. Attachment 17, P. 3. The TBN and NMTV stations all carry the TBN programming. Duff has described NMTV's role "as an outreach of Trinity's television ministry..." Attachment 14, P. 12.

In its inquiry letter (Attachment 8), the Commission asked NMTV whether Duff and Aguilar have participated in the formulation of programming and personnel policies.^{6/} Aguilar admitted that he had no role in establishing NMTV's programming policy. Attachment 11, P. 9. Duff claimed that she had "an

^{6/} Their role with respect to personnel will be described in Section 5, infra.

interest in local and public affairs programming", but she never claimed that NMTV followed through on her interest in such programming or that she had any independent influence on NMTV's programming. Attachment 14, P. 12. Of course, since NMTV's programming is provided by TBN, it would be incongruous to claim that NMTV's minority directors have any independent control over its programming.

The NMTV ownership report states that NMTV has a

NMTV (Debtor) fails to make any payment under the note or if NMTV defaults (as defined in the note), TBN may sell the assets at a private or public sale to anyone (including TBN). One of the events of default is defined in Paragraph 7(n) of the note as:

(n) Any sale, assignment or transfer of the licenses for WTGI, Delaware, New York [sic], issued by the Federal Communications Commission, by Debtor to any third party, or any change in the control of Debtor's board of directors (as defined by the FCC) from its current state [sic] of directors.

Thus, if Duff and Aguilar had attempted to sell the Wilmington station without TBN's consent, TBN could immediately sell the station's assets to itself for any price it wanted. Furthermore, if TBN had wanted to acquire the Wilmington station itself (if the multiple ownership rule is modified), it could exercise its influence over Duff and Aguilar to have them resign from the NMTV board and effect a change of control. NMTV would then be in default on the note, and TBN could have then acquired the assets of the Wilmington station.

Under those circumstances, it should have been very important for NMTV to undertake fundraising efforts to repay the note. In fact, however, it was TBN, not NMTV, who undertook to raise funds for the WTGI purchase. TBN's Praise The Lord newsletter implored TBN listeners to "send an extra \$5.00" to pay for the Wilmington purchase. Attachment 18, P. 2. As of September 1991, TBN had received \$37,000 earmarked for the WTGI

purchase. Attachment 10, P. 13. NMTV, on the other hand, had not received any contributions for the WTGI purchase. Attachment 10, Pp. 12-13. Moreover, thirty percent of the funds that TBN receives from WTGI's service area would be used to repay the loan. Attachment 10, P. 13. It is clearly outside the ambit of a normal creditor-debtor relationship to have the creditor (instead of the debtor) raising funds to retire the debt. TBN's active role in acquiring funds makes it impossible for any rational differentiation to be made between TBN's finances and NMTV's finances.

TBN also controls NMTV's finances on a more mundane level. In connection with the WTGI purchase, a \$400,000 deposit and a \$3.6 million payment were made into an escrow account on NMTV's behalf. In its inquiry letter (Attachment 8), the Commission ordered NMTV to disclose who signed those checks. The funds were disbursed from a TBN account into an NMTV account, and checks^{7/} were written on the NMTV account to purchase bank checks. See Attachment 14, Pp. 13-14. Both checks on the NMTV account were signed by Allan Brown, who is not an officer or director of NMTV but who is TBN's Vice President for Finance. Attachment 1, Exhibit 1, P. 3, Attachment 14, Pp. 13-14, Attachment 20. The second signatory on the

^{7/} Copies of the pertinent checks are submitted as Attachment 20 to this petition.

\$400,000 check is Paul Crouch. Attachment 20. The second signatory on the \$3,600,000 check is Charlene Williams, who is both the head of TBN's computer and accounting department and NMTV's Assistant Secretary. Attachment 2, P. 5, Attachment 10, P. 15. The fact that TBN's Vice President for Finance, who purportedly has no connection with NMTV, signs checks on NMTV's bank account shows that TBN controls NMTV's finances.^{8/} Furthermore, while Duff is listed as TBN's Treasurer (Attachment 2, P. 4), she signed neither check. Moreover, the checks indicate that any check over \$1,000 requires two signatures, so Duff cannot unilaterally spend more than \$1,000 without the consent of another TBN employee or officer.

5. Control over Personnel

In its inquiry letter, the Commission asked whether Duff and Aguilar have participated in formulating NMTV's personnel policies. Aguilar admitted that he had no role in setting personnel policies. Attachment 11, P. 9. While Duff does not specifically claim to set personnel policies, she claimed that "station managers are not authorized to hire or fire employees without my

^{8/} Duff describes Brown's signatures as an "irregularity". Attachment 14, P. 14. Obviously, the checks were not "irregular" to the Bank of California because the bank issued bank checks. They clearly demonstrate TBN's control over NMTV.

authority, except on an emergency basis". Attachment 14, P. 11. She also claims that she was "directly or indirectly" responsible for hiring several minority employees. Attachment 14, P. 12. She also claims to describe (but not set) NMTV's employment policies. Id.

A sworn declaration, however, casts doubt upon Duff's purported exclusive right to approve the hiring and firing of employees. In sworn declarations (submitted as Attachments 21 and 22 to this petition), Daniel Borowicz, an employee of WTGI, states that Paul Crouch offered Mr. Borowicz an interview with TBN for employment at the Wilmington station. Crouch referred Borowicz to Ben Miller, TBN's Vice President for Engineering. See Attachment 22. After Borowicz filed his petition to deny, Mr. Miller visited the WTGI studios and presented himself not as an NMTV decisionmaker but as a "consultant". Id. No mention was made of Duff in the selection process. There is an obvious conflict between the Duff and Borowicz affidavits that can only be resolved in a hearing.

Moreover, NMTV's officers and directors, which are normally a corporation's key personnel, are all either TBN employees or, in Aguilar's case, heavily dependent upon TBN's assistance. Duff does not claim in her affidavit that she established the policies used in hiring personnel, nor does she state whether she

personally interviews any employees. She also does not claim that she ever vetoed the recommendation of a station manager or TBN officer in personnel decisions. In light of Duff's employment at TBN, it is impossible to find that NMTV's minority directors had any personnel policies independent of TBN.

6. Other Indicia of Control - WTGI Acquisition

The circumstances surrounding the proposed purchase of WTGI provide further evidence that NMTV is under the absolute control of TBN and/or Paul Crouch. Crouch first learned of the opportunity to purchase WTGI from Jim Gammon, TBN's former lawyer and a television station broker. Attachment 10, P. 8. It was Crouch who negotiated the terms and conditions of the sale. Attachment 10, P. 8, Attachment 14, P. 6. When Crouch became interested in WTGI, Dale Osborn, the station manager of a TBN station, was sent to inspect the facility. Attachment 22. Mr. Osborn identified himself as a representative of TBN and Crouch. Id. When Paul Crouch, Jan Crouch,^{9/} and Jim Gammon inspected the property, TBN's operations were discussed at length, but no mention was made of NMTV. Attachment 21. Aguilar had little personal knowledge of the circumstances

^{9/} Jan Crouch, Paul Crouch's wife, is a TBN officer and director but is not an officer or director of NMTV. See Attachments 1 and 2.

surrounding the proposed WTGI purchase. Attachment 11, Pp. 7-8. Aguilar was not present at the NMTV board of directors' meeting where Crouch was authorized to bid for the station. See the minutes of the January 21, 1991 meeting, submitted as Attachment 23 to this petition. Since Crouch controlled two of three votes at that meeting, he could do anything he wanted.

7. Other Indicia of Control

It is apparent from various attachments to this pleading that the law firm May & Dunne, Chartered is communications counsel for both TBN and NMTV. Moreover, Ben Miller, TBN's Vice President for Engineering, has held himself out as Technical Director for both TBN and NMTV. Compare excerpts from license applications filed on behalf of NMTV (Attachment 24 to this petition) and TBN (Attachment 25 to this petition).

In her affidavit, Duff describes one of her main duties with respect to NMTV as the supervision of preparation of NMTV's applications before the Commission. Attachment 14, P. 7. She also claimed to have "at least helped formulate the representations that are made in the FCC application concerning NMTV's programming and personnel policies." Attachment 14, Pp. 11-12. NMTV's applications, however, often contain the same identical language as TBN's applications. Attachment 26 to this petition is a program service

statement from the assignment application for NMTV's Portland, Oregon station. Attachment 27 to this petition is TBN's program service statement in the application for consent to acquire its Canton, Ohio station. Except for the different licensee names, the texts of the statements are identical. Attachment 28 to this petition is NMTV's program service statement for WTGI. While there are minor differences in the phrasing, it is substantively identical to the other two statements. Equal employment opportunity programs filed by TBN and NMTV are also identical. Compare Attachments 29 and 30 to this petition. Moreover, the ascertainment survey forms of TBN stations and NMTV stations are identical in format. Compare Attachments 31 and 32, which are excerpts from the ascertainment forms of an NMTV station and a TBN station.

In responding to those facts, NMTV wrote in its opposition to the Borowicz petition (at P. 32):

Petitioner's suggestion that NMTV's applications and EEO programs, even its programs-problems list, bear similarities to those of Trinity Broadcasting Network is probative of very little. NMTV's counsel is not required to indulge in flights of creative fantasy for essentially boilerplate representations, nor is the use of similar programs-issues forms suggestive of any nefarious connection either.

That argument misses the point. NMTV has relied upon Duff's role in supervising the preparation of NMTV's applications as evidence of her independent involvement

in its affairs. A comparison of TBN's and NMTV's applications, however, shows that the end product is substantively identical. Thus, whatever role Duff has in NMTV's application process does not show that she acts independently from TBN. Furthermore, since Duff is compensated by TBN (not by NMTV), it is impossible to separate Duff's TBN role as Paul Crouch's assistant from her role as an NMTV director.

A final indicia of NMTV's subordinate status is the infrequency of its directors' meetings since Aguilar became a director. The Commission ordered NMTV to produce all minutes of directors' meetings since Aguilar became a director. The only documents produced were of (1) the August 15, 1990 meeting where Aguilar was elected a director, (2) the January 21, 1991 meeting where the WTGI purchase was approved and where Crouch held Aguilar's proxy, (3) a June 27, 1991 meeting where the major business appears to have been the memorialization of NMTV's existing policy of reimbursement for expenses, and (4) an "Action by Unanimous Consent" authorizing the